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OFFICE OF PETITIONS

In re	:	DECISION REGARDING
Takemoto, et al.	:	PATENT TERM ADJUSTMENT
Application No. 09/925,789	:	
Filed: August 10, 2001	:	
Attorney Docket No. 074129-	:	
0486	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. §154(b)", filed May 23, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred thirty (530) days to seven hundred nineteen (719) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **seven hundred nineteen (719) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 25, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is five hundred thirty (530) days. On

May 23, 2005, applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is seven hundred nineteen (719) days. Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants assert entitlement to a patent term adjustment of seven hundred nineteen (719) days on the basis that the PTO improperly assessed applicants a delay of one hundred eight (108) days for responding to an Office action mailed on July 9, 2004. Applicants assert that they filed a response on August 6, 2004, not on January 25, 2005.

The Office initially determined a patent term adjustment of five hundred thirty (530) days based on an adjustment for PTO delay of six hundred thirty-eight (638) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by Applicants' delay of one hundred eight (108) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b). The adjustment of 108 days is at issue.

The adjustment of 108 days has been found to be incorrect. Applicants have submitted a copy of a postcard receipt for the instant application, itemizing a "Response to Restriction Requirement (1 pg.)", and bearing a USPTO date stamp of August 6, 2004. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.² Accordingly, it is concluded that Applicants timely filed a reply in response to the July 9, 2004 Office action on August 6, 2004, and therefore should not have been assessed a delay of one hundred eight (108) days.

Furthermore, in view of applicants' response filed August 6, 2004, the Office should have been assessed eighty-one (81) days of PTO delay pursuant to 37 C.F.R. §1.703(a)(2), because the Notice of Allowance was not mailed until February 25, 2005.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **seven hundred nineteen (719) days** (719 (638+81) days of PTO delay and 0 days of applicant delay).

¹ Applicants filed the PTA application with the issue fee.

² MPEP 503.

Receipt of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin A. Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen